

AMENDED IN ASSEMBLY JUNE 17, 2004

AMENDED IN SENATE MAY 11, 2004

AMENDED IN SENATE APRIL 29, 2004

AMENDED IN SENATE APRIL 26, 2004

SENATE BILL

No. 1682

Introduced by Senators Ducheny and Speier
(Principal coauthor: Senator Oller)
(Coauthors: Senators Dunn and Sher)
(Coauthors: Assembly Members Kehoe and Steinberg)

February 20, 2004

An act to amend ~~Section~~ *Sections* 1365.1 and 1367.1, and to add Section 1367.4 to, *and to repeal Section 1366.3 of*, the Civil Code, and to amend ~~Section~~ *Sections* 116.540 and 703.010 of, and to add ~~Sections~~ *704.725 and* Section 729.035 to, the Code of Civil Procedure, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

SB 1682, as amended, Ducheny. Common interest developments: nonjudicial foreclosure.

Existing law defines and regulates common interest developments and authorizes the association that manages the development to levy assessments to fulfill its obligations. Existing law provides that a regular or special assessment of the association, late charges, reasonable costs of collection, and interest, as specified, are a debt of the owner of the separate interest at the time the assessment or other sums are levied, and are a lien on the owner's separate interest when the association records a specified document and follows a specified process. Existing

law permits the association to enforce the lien in any manner permitted by law including a sale by a trustee, also known as nonjudicial foreclosure.

~~Existing law creates a homestead exemption, and provides that a specified portion of equity in a homestead, as defined, is exempt from execution to satisfy a money judgment, with limited exceptions authorizes an owner of a separate interest in a common interest development to pay assessments that are in dispute in full under protest.~~ Existing law, the right of redemption, permits a judgment debtor, as defined, to redeem his or her real property, as specified, after judicial foreclosure only if the decree of foreclosure finds that a deficiency judgment may be ordered against the debtor.

This bill would revise and recast the procedures for collecting delinquent assessments for certain debts that arise on and after January 1, 2005. The bill would provide that when an association of a common interest development, ~~except an association of a common interest development with less than 25 separate interests,~~ seeks to collect a delinquent assessment of less than \$2,500, not including specified late charges and fees, the association must either file a civil action in small claims court or record a lien upon which it would be prohibited from foreclosing. ~~The bill would require an association that chooses to record a lien under these circumstances, if requested by the owner of the separate interest, to enter into binding arbitration with the owner to establish the amount, if any, that the association is owed and will be permitted to record. The bill would repeal the provision authorizing the owner of a separate interest development to pay assessments that are in dispute in full under protest.~~

The bill would permit an association of a common interest development, ~~as specified,~~ seeking to collect a delinquent regular or special assessment of \$2,500 or more, not including specified late charges and fees, to use foreclosure subject to specified conditions. Among these conditions, the bill would require the board of directors of an association to make the decision to record a lien against a separate interest or to foreclose upon a lien at an ~~open~~ *executive* meeting of the board, by a majority vote, and to record the results of the vote, *as specified*, and would require the board to provide notice of the decision to foreclose, as specified.

The bill would require, if the owner so requests, that the association ~~enter into binding arbitration with~~ *permit* the owner of the separate interest to establish the amount, if any, that the association is owed and

~~will be permitted to record as a lien~~ *elect alternative dispute resolution, under specified circumstances, but only if AB 1836 of the 2003–04 Regular Session is enacted.* The bill would further provide that, notwithstanding any law to the contrary, a nonjudicial foreclosure by an association to collect upon a debt for a delinquent assessment, as specified, is subject ~~to the homestead exemption and~~ to a right of redemption. The bill would provide a redemption period of 90 days. The bill would exempt from its provisions developers and separate interest owners in timeshare projects, as specified.

The bill would also authorize a homeowner’s association to appear and participate in small claims court hearings through a management company representative or bookkeeper who appears on behalf of the homeowner’s association.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1365.1 of the Civil Code is amended to
2 read:

3 1365.1. (a) The association shall distribute the written notice
4 described in subdivision (b) to each member of the association
5 during the 60-day period immediately preceding the beginning of
6 the association’s fiscal year. The notice shall be printed in at least
7 12-point type. An association distributing the notice to an owner
8 of an interest that is described in Section 11003.5 of the Business
9 and Professions Code may delete from the notice described in
10 subdivision (b) the portion regarding meetings and payment plans.

11 (b) The notice required by this section shall read as follows:

12

13

“NOTICE

14

15

ASSESSMENTS AND FORECLOSURE

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This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after



1 January 1, 2003. You may wish to consult a lawyer if you dispute
2 an assessment.

3
4 ASSESSMENTS AND NONJUDICIAL FORECLOSURE

5
6 The failure to pay association assessments may result in the loss
7 of an owner's property without court action, often referred to as
8 nonjudicial foreclosure. While the association is limited in its use
9 of nonjudicial foreclosure for liens perfected and recorded on and
10 after January 1, 2005, if the underlying debt is for the failure to pay
11 association assessments or dues, when using nonjudicial
12 foreclosure, the association records a lien on the owner's property.
13 The owner's property may be sold to satisfy the lien if the lien is
14 not paid. Assessments become delinquent 15 days after they are
15 due, unless the governing documents of the association provide for
16 a longer time. (Sections 1366 and 1367.1 of the Civil Code)

17 In a nonjudicial foreclosure, the association may recover
18 assessments, reasonable costs of collection, reasonable attorney's
19 fees, late charges, and interest. The association may not use
20 nonjudicial foreclosure to collect fines or penalties, except for
21 costs to repair common areas damaged by a member or a member's
22 guests, if the governing documents provide for this, nor may ~~an~~
23 ~~association with 25 or more separate interests use nonjudicial the~~
24 *association use nonjudicial* foreclosure to collect debts for
25 delinquent assessments under \$2,500, not including late charges
26 and certain fees. (Sections 1366, ~~1367.1, and 1367.4~~ *and 1367.1*
27 of the Civil Code)

28 The association must comply with the requirements of Section
29 1367.1 of the Civil Code when collecting delinquent assessments.
30 If the association fails to follow these requirements, it may not
31 record a lien on the owner's property until it has satisfied those
32 requirements. Any additional costs that result from satisfying the
33 requirements are the responsibility of the association. (Section
34 1367.1 of the Civil Code)

35 At least 30 days prior to recording a lien on an owner's separate
36 interest, the association must provide the owner of record with
37 certain documents by certified mail. Among these documents, the
38 association must send a description of its collection and lien
39 enforcement procedures and the method of calculating the
40 amount. It must also provide an itemized statement of the charges

1 owed by the owner. An owner has a right to review the
2 association's records to verify the debt. (Section 1367.1 of the
3 Civil Code)

4 If a lien is recorded against an owner's property in error, the
5 person who recorded the lien is required to record a lien release
6 within 21 days, and to provide an owner certain documents in this
7 regard. (Section 1367.1 of the Civil Code)

8 The collection practices of the association may be governed by
9 state and federal laws regarding fair debt collection. Penalties can
10 be imposed for debt collection practices that violate these laws.

11 12 PAYMENTS

13
14 When an owner makes a payment, he or she may request a
15 receipt, and the association is required to provide it. On the receipt,
16 the association must indicate the date of payment and the person
17 who received it. The association must inform owners of a mailing
18 address for overnight payments. ~~(Sections 1367.1 and~~ (Section
19 1367.1 of the Civil Code)

20 An owner may dispute an assessment debt by giving the board
21 of the association a written explanation, and the board must
22 respond within 15 days if certain conditions are met. ~~An owner
23 may pay assessments that are in dispute in full under protest, and
24 then request alternative dispute resolution. (Sections 1366.3 and
25 1367.1 of the Civil Code)~~

26 An owner is not liable for charges, interest, and costs of
27 collection, if it is established that the assessment was paid properly
28 on time. (Section 1367.1 of the Civil Code)

29 30 MEETINGS AND PAYMENT PLANS

31
32 An owner of a separate interest that is not a time-share may
33 request the association to consider a payment plan to satisfy a
34 delinquent assessment. The association must inform owners of the
35 standards for payment plans, if any exist. (Section 1367.1 of the
36 Civil Code)

37 The board of the directors must meet with an owner who makes
38 a proper written request for a meeting to discuss a payment plan
39 when the owner has received a notice of a delinquent assessment.
40 These payment plans must conform with the payment plan

standards of the association, if they exist. (Section 1367.1 of the Civil Code)”

SEC. 2. *Section 1366.3 of the Civil Code is repealed.*

~~1366.3.—(a) The exception for disputes related to association assessments in subdivision (b) of Section 1354 shall not apply if, in a dispute between the owner of a separate interest and the association regarding the assessments imposed by the association, the owner of the separate interest chooses to pay in full to the association all of the charges listed in paragraphs (1) to (4), inclusive, and states by written notice that the amount is paid under protest, and the written notice is mailed by certified mail not more than 30 days from the recording of a notice of delinquent assessment in accordance with Section 1367 or 1367.1; and in those instances, the association shall inform the owner that the owner may resolve the dispute through alternative dispute resolution as set forth in Section 1354, civil action, and any other procedures to resolve the dispute that may be available through the association.~~

~~(1) The amount of the assessment in dispute.~~

~~(2) Late charges.~~

~~(3) Interest.~~

~~(4) All reasonable fees and costs associated with the preparation and filing of a notice of delinquent assessment, including all mailing costs, and including reasonable attorney’s fees not to exceed four hundred twenty-five dollars (\$425).~~

~~(b) The right of any owner of a separate interest to utilize alternative dispute resolution under this section may not be exercised more than two times in any single calendar year, and not more than three times within any five calendar years. Nothing within this section shall preclude any owner of a separate interest and the association, upon mutual agreement, from entering into alternative dispute resolution for a number of times in excess of the limits set forth in this section. The owner of a separate interest may request and be awarded through alternative dispute resolution reasonable interest to be paid by the association on the total amount paid under paragraphs (1) to (4), inclusive, of subdivision (a), if it is determined through alternative dispute resolution that the assessment levied by the association was not correctly levied.~~

SEC. 3. *Section 1367.1 of the Civil Code is amended to read:*

1 1367.1. (a) A regular or special assessment and any late
2 charges, reasonable fees and costs of collection, reasonable
3 attorney's fees, if any, and interest, if any, as determined in
4 accordance with Section 1366, shall be a debt of the owner of the
5 separate interest at the time the assessment or other sums are
6 levied. At least 30 days prior to recording a lien upon the separate
7 interest of the owner of record to collect a debt that is past due
8 under this subdivision, the association shall notify the owner of
9 record in writing by certified mail of the following:

10 (1) A general description of the collection and lien enforcement
11 procedures of the association and the method of calculation of the
12 amount, a statement that the owner of the separate interest has the
13 right to inspect the association records, pursuant to Section 8333
14 of the Corporations Code, and the following statement in 14-point
15 boldface type, if printed, or in capital letters, if typed:
16 "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS
17 PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND
18 IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT
19 COURT ACTION".

20 (2) An itemized statement of the charges owed by the owner,
21 including items on the statement which indicate the amount of any
22 delinquent assessments, the fees and reasonable costs of
23 collection, reasonable attorney's fees, any late charges, and
24 interest, if any.

25 (3) A statement that the owner shall not be liable to pay the
26 charges, interest, and costs of collection, if it is determined the
27 assessment was paid on time to the association.

28 (4) The right to request a meeting with the board as provided
29 by subdivision (c).

30 (b) Any payments made by the owner of a separate interest
31 toward the debt set forth, as required in subdivision (a), shall first
32 be applied to the assessments owed, and, only after the assessments
33 owed are paid in full shall the payments be applied to the fees and
34 costs of collection, attorney's fees, late charges, or interest. When
35 an owner makes a payment, the owner may request a receipt and
36 the association shall provide it. The receipt shall indicate the date
37 of payment and the person who received it. The association shall
38 provide a mailing address for overnight payment of assessments.

39 (c) (1) An owner may dispute the debt noticed pursuant to
40 subdivision (a) by submitting to the board a written explanation of

1 the reasons for his or her dispute. The board shall respond in
2 writing to the owner within 15 days of the date of the postmark of
3 the explanation, if the explanation is mailed within 15 days of the
4 postmark of the notice.

5 (2) An owner, other than an owner of any interest that is
6 described in Section 11003.5 of the Business and Professions
7 Code, may submit a written request to meet with the board to
8 discuss a payment plan for the debt noticed pursuant to subdivision

9 (a). The association shall provide the owners the standards for
10 payment plans, if any exist. The board shall meet with the owner
11 in executive session within 45 days of the postmark of the request,
12 if the request is mailed within 15 days of the date of the postmark
13 of the notice, unless there is no regularly scheduled board meeting
14 within that period, in which case the board may designate a
15 committee of one or more members to meet with the owner.

16 (d) The amount of the assessment, plus any costs of collection,
17 late charges, and interest assessed in accordance with Section
18 1366, shall be a lien on the owner's interest in the common interest
19 development from and after the time the association causes to be
20 recorded with the county recorder of the county in which the
21 separate interest is located, a notice of delinquent assessment,
22 which shall state the amount of the assessment and other sums
23 imposed in accordance with Section 1366, a legal description of
24 the owner's interest in the common interest development against
25 which the assessment and other sums are levied, the name of the
26 record owner of the owner's interest in the common interest
27 development against which the lien is imposed. In order for the
28 lien to be enforced by nonjudicial foreclosure as provided in
29 subdivision (g), the notice of delinquent assessment shall state the
30 name and address of the trustee authorized by the association to
31 enforce the lien by sale. The notice of delinquent assessment shall
32 be signed by the person designated in the declaration or by the
33 association for that purpose, or if no one is designated, by the
34 president of the association, and mailed in the manner set forth in
35 Section 2924b, to all record owners of the owner's interest in the
36 common interest development no later than 10 calendar days after
37 recordation. Within 21 days of the payment of the sums specified
38 in the notice of delinquent assessment, the association shall record
39 or cause to be recorded in the office of the county recorder in which
40 the notice of delinquent assessment is recorded a lien release or

1 notice of rescission and provide the owner of the separate interest
2 a copy of the lien release or notice that the delinquent assessment
3 has been satisfied. A monetary charge imposed by the association
4 as a means of reimbursing the association for costs incurred by the
5 association in the repair of damage to common areas and facilities
6 for which the member or the member's guests or tenants were
7 responsible may become a lien against the member's separate
8 interest enforceable by the sale of the interest under Sections 2924,
9 2924b, and 2924c, provided the authority to impose a lien is set
10 forth in the governing documents. It is the intent of the Legislature
11 not to contravene Section 2792.26 of Title 10 of the California
12 Code of Regulations, as that section appeared on January 1, 1996,
13 for associations of subdivisions that are being sold under authority
14 of a subdivision public report, pursuant to Part 2 (commencing
15 with Section 11000) of Division 4 of the Business and Professions
16 Code.

17 (e) Except as indicated in subdivision (d), a monetary penalty
18 imposed by the association as a disciplinary measure for failure of
19 a member to comply with the governing instruments, except for
20 the late payments, may not be characterized nor treated in the
21 governing instruments as an assessment that may become a lien
22 against the member's subdivision separate interest enforceable by
23 the sale of the interest under Sections 2924, 2924b, and 2924c.

24 (f) A lien created pursuant to subdivision (d) shall be prior to
25 all other liens recorded subsequent to the notice of assessment,
26 except that the declaration may provide for the subordination
27 thereof to any other liens and encumbrances.

28 (g) An association may not voluntarily assign or pledge the
29 association's right to collect payments or assessments, or to
30 enforce or foreclose a lien to a third party, except when the
31 assignment or pledge is made to a financial institution or lender
32 chartered or licensed under federal or state law, when acting within
33 the scope of that charter or license, as security for a loan obtained
34 by the association; however, the foregoing provision may not
35 restrict the right or ability of an association to assign any unpaid
36 obligations of a former member to a third party for purposes of
37 collection. Subject to the limitations of this subdivision, after the
38 expiration of 30 days following the recording of a lien created
39 pursuant to subdivision (d), the lien may be enforced in any
40 manner permitted by law, including sale by the court, sale by the

1 trustee designated in the notice of delinquent assessment, or sale
2 by a trustee substituted pursuant to Section 2934a. Any sale by the
3 trustee shall be conducted in accordance with Sections 2924,
4 2924b, and 2924c applicable to the exercise of powers of sale in
5 mortgages and deeds of trusts. The fees of a trustee may not exceed
6 the amounts prescribed in Sections 2924c and 2924d.

7 (h) Nothing in this section or in subdivision (a) of Section 726
8 of the Code of Civil Procedure prohibits actions against the owner
9 of a separate interest to recover sums for which a lien is created
10 pursuant to this section or prohibits an association from taking a
11 deed in lieu of foreclosure.

12 (i) If it is determined that a lien previously recorded against the
13 separate interest was recorded in error, the party who recorded the
14 lien shall, within 21 calendar days, record or cause to be recorded
15 in the office of the county recorder in which the notice of
16 delinquent assessment is recorded a lien release or notice of
17 rescission and provide the owner of the separate interest with a
18 declaration that the lien filing or recording was in error and a copy
19 of the lien release or notice of rescission.

20 (j) (1) An association that fails to comply with the procedures
21 set forth in this section shall, prior to recording a lien, recommence
22 the required notice process.

23 (2) Any costs associated with recommencing the notice process
24 shall be borne by the association and not by the owner of a separate
25 interest.

26 (k) This section only applies to liens recorded on or after
27 January 1, 2003.

28 (l) This section is subordinate to, and shall be interpreted in
29 conformity with, Section 1367.4.

30 ~~SEC. 3.~~

31 *SEC. 4.* Section 1367.4 is added to the Civil Code, to read:

32 1367.4. (a) Notwithstanding any law or any provisions of the
33 governing documents to the contrary, this section shall apply to
34 debts for assessments that arise on and after January 1, 2005.

35 ~~(b) An association, except an association of a common interest~~
36 ~~development with less than 25 separate interests, that seeks to~~

37 (b) *An association that seeks to collect a delinquent regular or*
38 *special assessment of an amount less than two thousand five*
39 *hundred dollars (\$2,500), not including any late charges, fees and*

costs of collection, or interest, may attempt to collect that debt only in either of the following ways:

(1) By a civil action in small claims court, pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of the Code of Civil Procedure. An association that chooses to proceed by an action in small claims court, and prevails, may enforce the judgment as permitted under Article 8 (commencing with Section 116.810) of Title 1 of the Code of Civil Procedure.

(2) By recording a lien on the owner's separate interest upon which the association may not foreclose. If requested by the owner of a separate interest whom the association asserts is delinquent in paying assessments, an association that chooses to record a lien under these provisions, prior to recording the lien, shall ~~enter into binding arbitration with the owner in order to establish the amount, if any, that the association is owed and will be permitted to record.~~

~~(c) An association of a common interest development with less than 25 separate interests that seeks to collect a delinquent regular or special assessment of an amount less than two thousand five hundred dollars (\$2,500), not including any late charges, fees and costs of collection, or interest, or an association of any size that permit the owner to elect alternative dispute resolution as set forth in Article 2 (commencing with Section 1369.510) of Chapter 7. This procedure shall apply only if Assembly Bill 1836 of the 2003–04 Regular Session is enacted.~~

(c) An association that seeks to collect a delinquent regular or special assessment of an amount of two thousand five hundred dollars (\$2,500) or more, not including any late charges, fees and costs of collection, or interest, may use foreclosure subject to the following conditions:

(1) The decision to record a lien for a delinquent assessment shall be made only by the board of directors of the association and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the board members in an open session. The board shall record the vote in the minutes of that meeting.

(2) If requested by the owner of a separate interest whom the association asserts is delinquent in paying assessments, prior to recording any lien on an owner's separate interest, the association ~~shall enter into binding arbitration with the owner in order to establish the amount, if any, that the association is owed and will~~

1 ~~be permitted to record.~~ shall permit the owner to elect alternative
2 dispute resolution as set forth in Article 2 (commencing with
3 Section 1369.510) of Chapter 7. This procedure shall apply only
4 if Assembly Bill 1836 of the 2003–04 Regular Session is enacted.

5 (3) The decision to foreclose upon a lien for a delinquent
6 assessment that has been validly recorded shall be made only by
7 the board of directors of the association and may not be delegated
8 to an agent of the association. The board shall approve the decision
9 by a majority vote of the board members in an ~~open~~ executive
10 session. The board shall record the vote in the minutes of that
11 meeting. *The board shall maintain the confidentiality of the owner*
12 *or owners of the separate interest by identifying the matter by the*
13 *parcel number of the property, rather than the name of the owner*
14 *or owners.*

15 (4) The board shall provide personal notice to an owner of a
16 separate interest who occupies the separate interest if the board
17 votes to foreclose upon the separate interest. The board shall
18 provide written notice to an owner of a separate interest who does
19 not occupy the separate interest by first-class mail, postage
20 prepaid, at the most current address shown on the books of the
21 association.

22 (5) A nonjudicial foreclosure by an association to collect upon
23 a debt for delinquent assessments shall be subject to a right of
24 redemption. The redemption period within which the separate
25 interest may be redeemed from a foreclosure sale under this
26 paragraph ends 90 days after the sale.

27 (6) A nonjudicial foreclosure by an association to collect upon
28 a debt for delinquent assessments shall ~~be subject to the homestead~~
29 ~~exemption, as provided in Article 4 (commencing with Section~~
30 ~~704.710) of Chapter 4 of Division 2 of Title 9 of Part 2 of the Code~~
31 ~~of Civil Procedure.~~ *comply with the following requirements:*

32 (A) *The minimum bid shall be at least 90 percent of the*
33 *appraised value, excluding any senior liens that the buyer is*
34 *required to assume.*

35 (B) *A state licensed or certified appraiser shall perform the*
36 *exterior appraisal (using Form 2055 Exterior Only Appraisal).*
37 *The cost of the appraisal shall be recouped at sale if the property*
38 *is auctioned.*

39 (7) *The amount that may be recovered in small claims court to*
40 *collect upon a debt for delinquent assessments may not exceed the*

jurisdictional limits of the small claims court and shall be the sum of the following:

(A) The amount of the assessment due and unpaid as of the date of filing the complaint in the small claims court proceeding.

(B) In the discretion of the court, an additional amount described in subparagraph (A) equal to the amount due and unpaid for the period from the date the complaint is filed until the estimated date of judgment.

(d) This section does not apply to the debts of owners of separate interests in timeshare projects, as defined in Section 11003.5 of the Business and Professions Code, or to the debts of developers.

~~SEC. 4.~~

SEC. 5. Section 116.540 of the Code of Civil Procedure is amended to read:

116.540. (a) Except as permitted by this section, no individual other than the plaintiff and the defendant may take part in the conduct or defense of a small claims action.

(b) A corporation may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, who is employed, appointed, or elected for purposes other than solely representing the corporation in small claims court.

(c) A party who is not a corporation or a natural person may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, or in the case of a partnership, a partner, engaged for purposes other than solely representing the party in small claims court.

(d) If a party is an individual doing business as a sole proprietorship, the party may appear and participate in a small claims action by a representative and without personally appearing if both of the following conditions are met:

(1) The claim can be proved or disputed by evidence of an account that constitutes a business record as defined in Section 1271 of the Evidence Code, and there is no other issue of fact in the case.

(2) The representative is a regular employee of the party for purposes other than solely representing the party in small claims

1 actions and is qualified to testify to the identity and mode of
2 preparation of the business record.

3 (e) A plaintiff is not required to personally appear, and may
4 submit declarations to serve as evidence supporting his or her
5 claim or allow another individual to appear and participate on his
6 or her behalf, if (1) the plaintiff is serving on active duty in the
7 United States armed forces outside this state, (2) the plaintiff was
8 assigned to his or her duty station after his or her claim arose, (3)
9 the assignment is for more than six months, (4) the representative
10 is serving without compensation, and (5) the representative has
11 appeared in small claims actions on behalf of others no more than
12 four times during the calendar year. The defendant may file a claim
13 in the same action in an amount not to exceed the jurisdictional
14 limits stated in Sections 116.220 and 116.231.

15 (f) A party incarcerated in a county jail, a Department of
16 Corrections facility, or a Youth Authority facility is not required
17 to personally appear, and may submit declarations to serve as
18 evidence supporting his or her claim, or may authorize another
19 individual to appear and participate on his or her behalf if that
20 individual is serving without compensation and has appeared in
21 small claims actions on behalf of others no more than four times
22 during the calendar year.

23 (g) A defendant who is a nonresident owner of real property
24 may defend against a claim relating to that property without
25 personally appearing by (1) submitting written declarations to
26 serve as evidence supporting his or her defense, (2) allowing
27 another individual to appear and participate on his or her behalf if
28 that individual is serving without compensation and has appeared
29 in small claims actions on behalf of others no more than four times
30 during the calendar year, or (3) taking the action described in both
31 (1) and (2).

32 (h) A party who is an owner of rental real property may appear
33 and participate in a small claims action through a property agent
34 under contract with the owner to manage the rental of that
35 property, if (1) the owner has retained the property agent
36 principally to manage the rental of that property and not
37 principally to represent the owner in small claims court, and (2) the
38 claim relates to the rental property.

39 (i) *A party who is a homeowner's association of a common*
40 *interest development may appear and participate in a small claims*

1 *action through a management company representative or*
2 *bookkeeper who appears on behalf of that homeowner's*
3 *association.*

4 (j) At the hearing of a small claims action, the court shall
5 require any individual who is appearing as a representative of a
6 party under subdivisions (b) to ~~(h)~~ (i), inclusive, to file a
7 declaration stating (1) that the individual is authorized to appear
8 for the party, and (2) the basis for that authorization. If the
9 representative is appearing under subdivision (b), (c), (d), or ~~(h)~~
10 (i), the declaration also shall state that the individual is not
11 employed solely to represent the party in small claims court. If the
12 representative is appearing under subdivision (e), (f), or (g), the
13 declaration also shall state that the representative is serving
14 without compensation, and has appeared in small claims actions
15 on behalf of others no more than four times during the calendar
16 year.

17 ~~(j)~~

18 (k) A husband or wife who sues or who is sued with his or her
19 spouse may appear and participate on behalf of his or her spouse
20 if (1) the claim is a joint claim, (2) the represented spouse has given
21 his or her consent, and (3) the court determines that the interests
22 of justice would be served.

23 ~~(k)~~

24 (l) If the court determines that a party cannot properly present
25 his or her claim or defense and needs assistance, the court may in
26 its discretion allow another individual to assist that party.

27 ~~(l)~~

28 (m) Nothing in this section shall operate or be construed to
29 authorize an attorney to participate in a small claims action except
30 as expressly provided in Section 116.530.

31 *SEC. 6.* Section 703.010 of the Code of Civil Procedure is
32 amended to read:

33 703.010. Except as otherwise provided by statute:

34 (a) The exemptions provided by this chapter or by any other
35 statute apply to all procedures for enforcement of a money
36 judgment.

37 (b) Except as provided in subdivision (c), the exemptions
38 provided by this chapter or by any other statute do not apply if the
39 judgment to be enforced is for the foreclosure of a mortgage, deed
40 of trust, or other lien or encumbrance on the property other than

1 a lien created pursuant to this division or pursuant to Title 6.5
2 (commencing with Section 481.010) (attachment).

3 (c) The exemptions provided by Article 4 (commencing with
4 Section 704.710) apply to foreclosures by the association of a
5 common interest development pursuant to subdivision (g) of
6 Section 1367.1 of the Civil Code, subject to the conditions of
7 Section 1367.4 of the Civil Code.

8 ~~SEC. 5. Section 704.725 is added to the Code of Civil~~
9 ~~Procedure, to read:~~

10 ~~704.725. Notwithstanding any provision of law to the~~
11 ~~contrary, a homestead is exempt from sale under this article if the~~
12 ~~sale arises from a foreclosure by the association of a common~~
13 ~~interest development pursuant to subdivision (g) of Section 1367.1~~
14 ~~of the Civil Code, subject to the conditions of Section 1367.4 of~~
15 ~~the Civil Code.~~

16 ~~SEC. 6.~~

17 ~~SEC. 7. Section 729.035 is added to the Code of Civil~~
18 ~~Procedure, to read:~~

19 ~~729.035. Notwithstanding any provision of law to the~~
20 ~~contrary, the sale of a separate interest in a common interest~~
21 ~~development is subject to the right of redemption if the sale arises~~
22 ~~from a foreclosure by the association of a common interest~~
23 ~~development pursuant to subdivision (g) of Section 1367.1 of the~~
24 ~~Civil Code, subject to the conditions of Section 1367.4 of the Civil~~
25 ~~Code.~~

